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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 JEFF DUMBRELL and
11 PAUL RASORI,

Plaintiffs,

12 vs.

13 POWAPOS, INC. et al.,

14 Defendants.

CASE NO. 16cv2305-LAB (MDD)

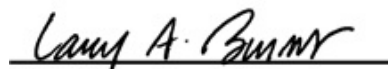
ORDER OF DISMISSAL

15 Dumbrell and Rasori sued PowaPos for breach of contract. Plaintiffs admit that the
16 Court lacks jurisdiction unless it counts anticipated attorney's fees towards the amount in
17 controversy. Our circuit hasn't decided whether "attorney's fees that are anticipated but
18 unaccrued" at the time of filing "may be included in the amount-in-controversy." *Gonzales*
19 *v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 649 (9th Cir. 2016).

20 The Court adopts Judge Easterbrook's position: "legal expenses that lie in the future
21 and can be avoided by the defendant's prompt satisfaction of the plaintiff's demand are not
22 an amount 'in controversy' when the suit is filed." *Gardynski-Leschuck v. Ford Motor Co.*,
23 142 F.3d 955, 959 (7th Cir. 1998). Since Dumbrell and Rasori admit that, excluding future
24 fees, the amount at stake is below \$75,000, the Court lacks jurisdiction. 28 U.S.C. § 1332(a).
25 The case is dismissed without leave to amend, but without prejudice to filing in state court.

26 **IT IS SO ORDERED.**

27 DATED: May 30, 2017

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HONORABLE LARRY ALAN BURNS
United States District Judge